

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL GOODWINE,

Plaintiff,

-against-

AMTRAK,

Defendant.

19-CV-2599 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff filed this action *pro se*. On April 15, 2019, the Court dismissed the complaint for failure to state a claim. On April 29, 2019, Plaintiff filed a “motion to recuse.” On May 2, 2019, the Court denied the motion to recuse, liberally construed the motion as also seeking reconsideration of the dismissal order, and denied that relief. The Court also instructed Plaintiff that this matter is closed, and that only documents directed to the Second Circuit Court of Appeals would be accepted. The Court warned Plaintiff that if he filed other meritless documents, the Court would direct him to show cause why he should not be barred from filing further documents in this action. Plaintiff filed a “motion for relief on order for recusal” on May 8, 2019, and a notice of appeal on May 13, 2019.

DISCUSSION

Normally, “[t]he filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Under the Federal Rules of Appellate Procedure, however, if a party (1) files a motion under Federal Rule of Civil Procedure 60(b) within 28 days after judgment is entered, *see* Fed. R. App. P. 4(a)(4)(A)(vi), and (2) files a notice of appeal before the district court

disposes of that motion, then the notice of appeal does not become “effective” until after the district court rules on the motion, *see* Fed. R. App. P. 4(a)(4)(B)(i).

Plaintiff filed his motion for reconsideration within 28 days of entry of judgment and filed his notice of appeal before the Court disposed of that motion. The Court therefore has jurisdiction to address the motion. The motion is denied for the reasons set forth in the May 2, 2019 order.

The Court grants Plaintiff thirty days from the date of this order to show cause why he should not be barred from filing any additional documents in this case. *See Moates v. Barkley*, 147 F.3d 207, 208 (2d Cir. 1998) (per curiam) (“The unequivocal rule in this circuit is that the district court may not impose a filing injunction on a litigant *sua sponte* without providing the litigant with notice and an opportunity to be heard.”). If Plaintiff fails to show cause within the time allowed, the Court will bar Plaintiff from filing any future documents in this case except for those directed to the Second Circuit.

CONCLUSION

The motion is denied, and the Clerk of Court is directed to terminate it. (ECF No. 9.)

The Clerk of Court is further directed to mail a copy of this order to Plaintiff and note service on the docket.

Plaintiff is directed to show cause within thirty days from the date of this order why the Court should not bar him from filing further documents in this action. A declaration form is attached.

The Clerk of Court is directed to docket this as a “written opinion” within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: May 20, 2019
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the first and last name of each plaintiff or
petitioner.

Case No. _____ CV _____

-against-

Write the first and last name of each defendant or
respondent.

DECLARATION

Briefly explain above the purpose of the declaration, for example, "in Opposition to Defendant's Motion for Summary Judgment," or "in Response to Order to Show Cause."

I, _____, declare under penalty of perjury that the

following facts are true and correct:

In the space below, describe any facts that are relevant to the motion or that respond to a court order. You may also refer to and attach any relevant documents.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Attach additional pages and documents if necessary.

Executed on (date)

Signature

Name

Prison Identification # (if incarcerated)

Address

City

State

Zip Code

Telephone Number (if available)

E-mail Address (if available)